

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>WEST VALLEY NUCLEAR</b>	:	
<b>SERVICES CO., INC.</b>	:	<b>DETERMINATION ON</b>
	:	<b>REMAND</b>
for Revision of Determinations or for Refunds	:	DTA NO. 811511
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period December 1, 1985	:	
through February 28, 1990.	:	

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Petitioner, West Valley Nuclear Services Co., Inc., P.O. Box 191, Rock Springs Road, West Valley, New York 14171-0191, filed a petition for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1985 through February 28, 1990.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, from February 27, 1995 through March 2, 1995. The parties submitted briefs by October 12, 1995 and the Administrative Law Judge issued his determination on April 11, 1996. On December 11, 1997, the Tax Appeals Tribunal issued its decision which remanded this matter to the Administrative Law Judge to address the issue set forth below. The Tribunal directed the Administrative Law Judge to render his determination within 30 days from the date of its decision. Petitioner appeared by Phillips, Lytle, Hitchcock, Blaine & Huber (James A. Locke, Esq. and Martha L. Salzman, Esq., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Arnold M. Glass, Esq., and Brian J. McCann, Esq., of counsel).

***ISSUE***

Whether certain of petitioner's purchases were exempt from taxation pursuant to Tax Law § 1115(a)(15) and (16) because such purchases consisted of tangible personal property sold to a contractor for use in erecting a structure or a building of an exempt organization, or adding to, altering or improving or maintaining, servicing or repairing the real property of an organization described in Tax Law § 1116(a).

***FINDINGS OF FACT***

The Findings of Fact in this matter, numbered "1" through "81", are contained in the determination issued on April 11, 1996. Additional Findings of Fact are set forth below.

82. The Contract between DOE and petitioner specifically includes construction activities to be performed by petitioner or by subcontract. The Contract contemplates the "construction of new facilities or the alteration or repair of NYSERDA or Government-owned facilities at the plant." (Contract Art. IV, § 4.3.)

83. In remanding this matter, the Tribunal directed me to consider whether those purchases set forth by petitioner in pages 12-26 and 43-57 of Appendix A to its post-hearing brief are exempt under Tax Law § 1115(a)(15) and (16). For the record, the purchases set forth by petitioner in pages 12-26 of Appendix A are described in Finding of Fact "79" in the April 11, 1996 determination. The purchases set forth in pages 43-57 are described in Finding of Fact "81".

84. Of the purchase orders discussed in Finding of Fact "79", the following constitute purchases of tangible personal property: P.O. Nos. 39620, 30712, 21740, 30697, 21148, 24063, 21342, 15210, 35534, 05838 (itemized purchase order for tangible personal property and services), 22587, 21053 (itemized purchase order for tangible personal property and services),

29695, 28679, 29915, 21237, 15264, 14571, 37777, 13846, 40865, 26735, 24375, 22497, 38221 (itemized purchase order for tangible personal property and installation), 37984, 37209, 22043, 37744, 36076, 43236, 39124, 37344, 24912, 34949, 43642, 18310, 25926, 28436, and 13832.

85. Of the purchase orders discussed in Finding of Fact "79", the following constitute either purchases of services or purchases of tangible personal property and services with no itemization of the cost of the property: P.O. Nos. 12753, 28423, 24632, 25680, 25541, 12720, 23387, 40327, 21363, 23676, 12689, 12702, 27746, 20506, 25185, 14730, 22359, 27543, 24987, 20521, and 12723.

86. Of the purchase orders discussed in Finding of Fact "81", the following constitute purchases of tangible personal property: 27485, 20504 (itemized purchase order for tangible personal property and services), 26458, 30496, 17984 (itemized purchase order for tangible personal property and services), 20112, 30254, 33233, 15604, 27051, 27083, 37613, 38826, 17983, 21944, 14554, 43362, 36067, 11782, 17275, 34674, 15672, 15999, 34570, 15670, 12708, 28297, 17293, 17941, 18433, 18434, 17213, 21530, 31660, 31230, 29733, 31291, 33378, 38107, 17995, 33520, 18403, 21164, 21588, 32125, 13585, 17931, 14135, 14517, 14889, 15654, 40452, 15948, 17930, 17937, 22144, 22449, 29024, 23342, 43293, 17936, 36831, 17220, 31381, 26149 (itemized purchase order for tangible personal property and services), 28687, 28786, 40609, 17012, 15961, 24120, 18403, 23380, 20566, 36746, 36776, 38812, 38815, 38890, 12924, 27946, and 26858.

87. Of the purchase orders discussed in Finding of Fact "81", the following constitute either purchases of services or purchases of tangible personal property and services with no itemization of the cost of the property: 35661, 36250, 24172, 28634, 25913, 10277, 26709,

28635, 26600, 31527, 27674, 20080, 25500, 12634, 34614, 20134, 26569, 22470, 26762, 26983, 10297, 12635, 29073, 17282, 26365, 26573, 12707, 28712, 26643, 37646, 26573, and 28425.

### ***CONCLUSIONS OF LAW***

The Conclusions of Law in this matter, lettered “A” through “Z”, are contained in the April 11, 1996 determination. Additional Conclusions of Law pertinent to the issue on remand follow.

AA. Tax Law § 1115(a)(15) exempts receipts from the following from sales and use taxes:

“Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in [Tax Law § 1116(a)], or adding to, altering or improving real property, property or land of such an organization, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.”

Tax Law § 1115(a)(16) exempts receipts from the following from sales and use taxes:

“Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in [Tax Law § 1116(a)], as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.”

BB. The provisions in question thus exempt tangible personal property sold to a contractor, subcontractor or repairman for use in either capital improvement work (Tax Law § 1115[a][15]) or in maintaining, servicing or repairing real property, property or land (Tax Law § 1115[a][16]), provided that: 1) the real property is owned by an exempt organization as defined in Tax Law § 1116(a) and 2) the tangible personal property so purchased becomes an integral component part of the structure, building or real property. Here, the real property in question is

owned by NYSERDA, a New York public corporation. NYSERDA is an organization exempt from sales and use tax under Tax Law § 1116(a)(1). Furthermore, in making the purchases described in Findings of Fact “79” and “81” petitioner was acting as a contractor. As stated in the April 11, 1996 determination, “[t]he record in this case leaves no room for doubt that petitioner’s purpose in making the purchases at issue was to enable petitioner to fulfill its contractual obligation to manage and operate the Project” (Conclusion of Law “K”). Such obligations included construction services (*see*, Finding of Fact “82”). Finally, upon review of the purchases as described in Findings of Fact “79” and “81”, it is concluded that the tangible personal property purchased as described therein became integral component parts of the real property, property or land owned by NYSERDA. Accordingly, the purchases of tangible personal property set forth in Findings of Fact “79” and “81” were exempt from tax pursuant to Tax Law 1116(a)(16). The specific purchase orders for these purchases are listed in Findings of Fact “84” and “86”.

CC. Petitioner has not shown entitlement to exemption under Tax Law § 1116(a)(15) or (16) for the purchase orders listed in Findings of Fact “85” and “87”. These purchase orders indicate either purchases of services or purchases of tangible personal property and services without an itemization of the amount of property so purchased. Since the exemptions under Tax Law § 1116(a)(15) and (16) do not extend to services and since petitioner has not introduced any evidence to show what portion of its mixed purchases of property and services constitute purchases of property, petitioner’s claim for exemption with respect to such purchase orders must be denied.

DD. With respect to the issue presented on remand, the petition of West Valley Nuclear Services Co., Inc. is granted in part, pursuant to Conclusion of Law “BB”, and denied in part,

pursuant to Conclusion of Law “CC”. In accordance with the Tax Appeals Tribunal’s December 11, 1997 decision, the full record in this matter shall be returned to the Tribunal for a decision on all issues raised on exception.

DATED: Troy, New York  
January 12, 1998

/s/ Timothy J. Alston  
ADMINISTRATIVE LAW JUDGE